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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER TATE and BRIAN UNITT

Appeal 2009-012211
Application 09/737,050
Technology Center 2400

Before ALLEN R. MacDONALD, JOHN A. JEFFERY, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-7, 9-11, 13-15, 17-19, 21-23, and 25.¹ We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention distributes time-staggered data streams, for example, in a Near Video On-Demand (NVOD) system. A multicast server (1) receives content and control data from a content providing server, and (2) forwards data stream versions of the content, offset in time by a predetermined period defined in the control data. A subscriber may then view the content upon request by tuning to a channel for one of the data streams. *See generally* Spec. 1:5-8, 7:18-30, 9:32-12:6. Claim 1 is illustrative with key disputed limitations emphasized:

1. A system for streaming data comprising a content providing server capable of storing content and communicating the content to a plurality of client terminator units via a communications network in response to requests for the content, and a distribution server coupled in-line between the content providing server and the plurality of client terminator units, wherein the distribution server is arranged to generate a plurality of onward data streams and transmit the plurality of onward data streams to the plurality of client terminator units, respectively, in response to control data received from the content providing server and in response to an incoming data stream received or being received from the content providing server, the incoming data stream corresponding to the content, wherein the plurality of onward data streams correspond substantially to the content and *the distribution server offsets in time each of the plurality of onward data streams with*

¹ Although the Examiner indicates that the status of the claims in Appellants' Brief is incorrect, the Examiner nevertheless does not provide a corrected claim status. Ans. 2. We therefore presume that the Examiner's statement is a typographical error and that the claim status in the Brief (App. Br. 2) is correct.

respect to a preceding one of said plurality of onward data streams by a single offset value indicated in the control data.

The Examiner relies on the following as evidence of unpatentability:

Banker	US 5,357,276	Oct. 18, 1994
DeBey	US 5,701,582	Dec. 23, 1997
Hendricks	US 6,201,536 B1	Mar. 13, 2001 (filed Dec. 2, 1994)
Fluss	US 6,304,578 B1	Oct. 16, 2001 (filed May 1, 1998)
Hodge	US 6,564,381 B1	May 13, 2003 (filed Sept. 25, 1998)

THE REJECTIONS

1. The Examiner rejected claims 1, 3, 4, 10, 13, 14, 17, 18, 21, 22, and 25 under 35 U.S.C. § 103(a) as unpatentable over Hendricks, Hodge, and Banker. Ans. 3-10.^{2,3}

2. The Examiner rejected claims 2, 11, 15, 19, and 23 under 35 U.S.C. § 103(a) as unpatentable over Hendricks, Hodge, Banker, and DeBey. Ans. 11.

3. The Examiner rejected claims 5, 6, and 9 under 35 U.S.C. § 103(a) as unpatentable over Hendricks, Hodge, Banker, and Fluss. Ans. 11-14.

² Although the Examiner includes claim 7 in the statement of the rejection, we nonetheless presume that the Examiner intended to omit this claim here since it was (1) not further discussed in this rejection, and (2) rejected over Hendricks, Hodge, Banker, Fluss, and DeBey below. We therefore present the correct claim listing here for clarity.

³ Throughout this opinion, we refer to (1) the Appeal Brief filed January 10, 2008; (2) the Examiner's Answer mailed April 10, 2008; and (3) the Reply Brief filed June 10, 2008.

4. The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as unpatentable over Hendricks, Hodge, Banker, Fluss, and DeBey. Ans. 14-15.

THE OBVIOUSNESS REJECTION OVER HENDRICKS, HODGE, AND BANKER

The Examiner finds that Hendricks discloses every recited feature of representative claim 1 except for (1) communicating content to client terminator units in response to requests for the content, and (2) a distribution server that offsets in time plural data streams corresponding to the content by a single offset value. The Examiner cites Hodge and Banker, respectively, as teaching these features in concluding that the claim would have been obvious. Ans. 3-6.

Appellants argue that Hendricks' cable headend does not effect any timing offsets because program start times are controlled and assigned by the operations center. App. Br. 9-14. Accordingly, Appellants argue, Banker's single offset value cannot properly be combined with Hendricks' system because it would corrupt the program scheduling of the operations center. *Id.*

The issue before us, then, is as follows:

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Hendricks, Hodge, and Banker collectively would have taught or suggested a distribution server that offsets in time plural data streams by a single offset value indicated in control data received from a content providing server?

FINDINGS OF FACT (FF)

1. Hendricks discloses a television program delivery system 200 that includes an operations center 202 that packages programs for transmission and generates a program control information signal. Hendricks, col. 6, ll. 56-67; col. 8, ll. 8-10; Fig. 1. The operations center delivers program packages with associated program control information signals to a cable headend 208. Hendricks, col. 8, ll. 30-34. The program control information signal may include the start times of programs in the associated program package. Hendricks, col. 8, ll. 34-41.

2. Hendricks' system includes an NVOD program delivery technique wherein a program can be displayed on multiple program channels with staggered start times. Hendricks, col. 34, ll. 30-35. Upon subscriber request for a particular program, the network manager 214, which is located at the cable headend, (1) determines the channel with the next available staggered start time for the program, (2) forwards the request to a file server 215 to find the appropriate data for the request, and (3) sends the data to the subscriber. Hendricks, col. 34, ll. 52-58.

3. Banker discloses an NVOD service wherein a program is shown sequentially on different channels. Banker, col. 11, ll. 23-28. The offset time between each of the program start times on the different channels can be 15 minutes. Banker, col. 11, 28-33; Fig. 9.

ANALYSIS

Based on the record before us, we find no error in the Examiner's obviousness rejection of representative claim 1 which recites, in pertinent

part, “the distribution server offsets in time each of the plurality of onward data streams with respect to a preceding one of said plurality of onward data streams by a single offset value indicated in the control data.”

Hendricks’ operations center sets program start times. FF 1. Further, contrary to Appellants’ arguments, Hendricks’ cable headend implements the staggered start times in the NVOD embodiment, and thus does effect timing offsets. *See* FF 2; Ans. 15-16. Although Hendricks does not explicitly describe how the start times in the NVOD embodiment are set, one of ordinary skill in the art would reasonably infer that the operations center’s program control information signal would provide these start times. *See* FF 1-2. That is, the start times for the NVOD embodiment must be set somewhere, and, absent any other description of setting start times, one would reasonably look to Hendricks’ program control information signal in this regard. Moreover, Appellants admit that Hendricks discloses “*all* programming scheduling for scheduled programs are controlled and assigned by the operations center.” App. Br. 10 (emphasis added). Thus, Hendricks’ NVOD system includes a content providing server (operations center) that sends control data indicating start times to a distribution server (cable headend) that offsets data streams in time in accordance with the start times.

Banker discloses an NVOD system where the start time for each data stream is offset by the same value with respect to the preceding data stream. FF 3. That is, Banker discloses a single offset value. As the Examiner finds, it would have been obvious to combine Banker’s single offset value with Hendricks’ system. Ans. 5-6, 17-18. This would not corrupt Hendricks’ start times, as Appellants argue, but would merely require the operations

center to set a particular single offset value as the start time for NVOD programs. Ans. 17-18. That is, for NVOD programs, there would be no need to set multiple start times for each version of a program, but rather a single offset value that applies to all versions of the program. *See* Ans. 18-19. Hendricks' operations center would still control the programming and scheduling of NVOD programs.

Regarding Appellants' Reply Brief arguments (Reply Br. 2-4), it is within the ordinary skill in the art to substitute a single offset value for multiple start times. First, start times are merely offsets from some point in time. Second, in an NVOD system such as Banker's, where the start times begin at regular intervals for each version of a program, there is a clear advantage to sending the interval information only once as a single offset value, rather than specifying the same interval multiple times. Accordingly, it would have been obvious to not only set regular intervals for different versions of a program in Hendricks' NVOD embodiment, but also to send a single offset value to the cable headend to implement such timing. *See* Ans. 18-19.

We are therefore not persuaded that the Examiner erred in rejecting representative claim 1, and claims 4, 10, 13, 14, 17, 18, 21, 22, and 25 not separately argued with particularity.

Although Appellants separately argue claim 3, the arguments presented are similar to those presented regarding claim 1. *See* App. Br. 14. We are not persuaded by these arguments for the reasons discussed above. Specifically, it would have been obvious to combine Banker's single offset value with Hendricks and Hodge such that Hendricks' operations center would provide the single offset value to the cable headend.

THE OTHER OBVIOUSNESS REJECTIONS

We also sustain the Examiner's obviousness rejections of claims 2, 5-7, 9, 11, 15, 19, and 23. Ans. 11-15. Despite nominally arguing these claims separately, Appellants rely on the same arguments presented with respect to claim 1. App. Br. 15. We are not persuaded by these arguments for the reasons previously discussed.

CONCLUSION

The Examiner did not err in rejecting claims 1-7, 9-11, 13-15, 17-19, 21-23, and 25 under § 103.

ORDER

The Examiner's decision rejecting claims 1-7, 9-11, 13-15, 17-19, 21-23, and 25 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc